

Response Under 37 C.F.R. § 41.37

Appellant's Brief

Application No. 10/614,079

Paper Dated: February 22, 2010

In Reply to USPTO Correspondence of September 24, 2009

Attorney Docket No. 3896-083335 (P-5807)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No.	:	10/614,079	Confirmation No. 8339
Appellants	:	KIRK D. SWENSON et al.	
Filed	:	July 8, 2003	
Title	:	POINT OF CARE INFORMATION MANAGEMENT SYSTEM	
Group Art Unit	:	3626	
Examiner	:	Eliza Squires	

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Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

For the reasons set forth herein, Appellants respectfully submit that the Final Office Action dated September 24, 2009 is based upon improper rejections of the claims and does not establish a *prima facie* case of anticipation or obviousness based on the cited references.

**I. Rejection of claims 1, 6, 9, 10, 12-13, and 28 under 35 U.S.C. § 103(a) as being obvious over the article entitled "Hold the Lab in the Palm of Your Hand: Point-of-Care Blood Analyzers Speed Test Results at the Patient's Bedside" to McConnell in view of United States Patent No. 5,897,493 to Brown.**

The Final Office Action fails to state a *prima facie* case of obviousness of claims 1, 6, 9, 10, 12-13, and 28 by the combined teachings of the Brown patent and the McConnell article because neither reference taken alone or in combination teaches or suggests a central device as claimed in the present application.

I hereby certify that this correspondence is being electronically submitted to the United States Patent and Trademark Office on February 22, 2010.

02/22/2010  
Date

  
Signature

Sharyn Beck

Typed Name of Person Signing Certificate

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Claim 1 recites, in relevant part, “. . . receiving by a central device sample data from at least one sample testing device at a patient point of care location . . . said central device adapted to maintain at least one database”. Claim 1 also recites, in relevant part, “updating said database by the central device and providing said database to a network server”. Accordingly, as defined by claim 1, a database is maintained on a central device, data is received from a monitoring device by the central device, updates are performed on the database at the central device, and data can be sent from a central device to a network server. The data that resides in the central device database can be manipulated quickly and efficiently, thereby allowing point of care physicians to perform their testing, pass the information to the central device database, and then further complete the information record in the database before it is loaded into a network server.

The Brown patent discloses a monitoring system for querying a patient and generating a script in response thereto. The Brown patent describes a simple monitoring system comprising a remote apparatus connected to a network server. The Brown patent monitoring system only passes patient information to a central system (*see* the Brown patent, column 2, lines 55-67 and column 5, lines 15-19). The Brown patent central system corresponds to the network server in the present application. Therefore, the Brown patent does not teach the intermediary steps of the present application, namely, passing the information to a central device and then onto the network server as recited in independent claim 1.

This intermediate step of the present application allows testing to be performed on one device which is not removed from a contaminated area, while still allowing the practitioner to further update and process the information before submitting the database to the network server. After the database is sent to the network server, data is normally less accessible because of external parameters. Accordingly, the Brown patent does not disclose or suggest this intermediate step.

**Prior art fails to teach or suggest tagging separately**

Independent claim 1 recites, in relevant part, “tagging said received sample data with patient identifier label information, said patient identifier label information communicated to said central device via a data input device”. The presently claimed invention provides a

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database entry on the central device that can be updated using a data input device (*see* paragraphs [0039]-[0044] of the present application). In order to facilitate this, sample data is sent from the sample testing device (*see* paragraph [0042] of the present application). The patient identifier can then be sent from a data input device separately, at any time, to the central device where it is tagged to the sample data. The sample data is received at the central device from the sample testing device. Again, the present invention distributes the processing and allows each device to communicate its data to the central device where it is processed. In the case of patient identifiers, they are sent to the central device and then tagged to the sample data. The McConnell article describes a point-of-care blood analyzer having a self-contained sample cartridge that can scan using laser bar-code and can communicate when the device is placed in a docking station (*see* the McConnell article, page 58, bullet 4).

The provision of bar-code scanning in the McConnell article fails to teach or suggest that sample data is tagged with patient identifier label information which is communicated to the central device by a data input device of claim 1. Therefore, the “tagging” recited in claim 1 of the present invention is not merely the ability to scan using radio frequency tags. The McConnell publication describes only a scanning device that must be connected to a docking station; the docking station communicates data stored on the hand held device to the network, not the device itself. The McConnell article fails to teach or suggest “tagging with patient identifiers” by a central device.

Accordingly, Appellants respectfully submit that neither the Brown patent, nor the McConnell article, nor the combination of the Brown patent and the McConnell article teach or suggest all steps of the present invention recited in independent claim 1. Reconsideration of the rejection of independent claim 1 is respectfully requested.

## ***II. Rejection of claim 6 under 35 U.S.C. 103(a) as being unpatentable over the McConnell article in view of the Brown patent.***

With specific reference to the Examiner's rejection of claim 6, in addition to the reasons discussed hereinabove in connection with independent claim 1, neither the Brown patent nor the McConnell article teaches or suggests controlling a central device to communicate data to

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a patient identifier information label as at least one data packet communicated from said central device via a second wireless communication module, as recited in claim 6. Appellants have reviewed Figures 1 and 9 of the Brown patent and find that none of the applied references discuss communicating data to a label as required by the claimed language of claim 6. The Examiner has argued that writing a report in the Brown patent teaches this step of the claims. However, this step requires that data is sent to the patient identifier label. A report, including a patient name, is not a patient label identifier label nor is it even arguably similar. In addition, none of the prior art teaches channeling to the label specifically via a second device. Accordingly, for these reasons, reconsideration of the rejection of claim 6 is respectfully requested.

***III. Rejection of claims 12-13 under 35 U.S.C. § 103(a) being unpatentable over the McConnell article and Brown patent.***

With specific reference to the Examiner's rejection of claim 12, in addition to the reasons discussed hereinabove in connection with independent claim 1, neither the Brown patent nor the McConnell article teach nor suggest a testing device located within a contamination field about a patient at a patient point of care location. In the McConnell article, the testing device is a roaming device, and the McConnell article teaches using the device throughout a variety of places, including the operating room, emergency department, ambulances, and helicopters (see the McConnell article, page 57). However, the McConnell article fails to disclose or suggest locating the testing device only within a contamination field as defined in the present application, meaning it stays only within such an area. Accordingly, for these reasons, reconsideration of the rejection of claim 12 is respectfully requested.

With specific reference to the Examiner's rejection of claim 13, in addition to the reasons discussed hereinabove in connection with reference to claim 12, neither the Brown patent nor the McConnell article disclose or suggest delineating a contamination field from a non-contaminated area to promote safety. It would not be obvious to separate the system between contamination and non-contamination areas, as required by claim 13 of the present

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invention. Accordingly, for these reasons, reconsideration of the rejection of claim 13 is respectfully requested.

***IV. Rejection of claims 2-5 and 7-8, 14-15, 20-24, 26-27, and 29 under 35 U.S.C. 103(a) as being unpatentable over Brown in view of McConnell in further view of United States Patent Application Publication No. 2001/0051766 to Gazdzinski or United States Patent Application Publication No. 2003/0140928 to Bui et al..***

Claims 2-5 and 7-8 depend directly or indirectly from and add further limitations to independent claim 1. Appellants respectfully submit that the Gazdzinski publication and the Bui publication fails to rectify the deficiencies of the Brown patent and the McConnell article. For the foregoing reasons, dependent claims 2-5 are patentable over the Brown patent, the McConnell article, the Gazdzinski publication, the Bui publication, and any combination thereof. Reconsideration of the rejection of dependent claims 2-5 is respectfully requested.

Appellants further respectfully submit that independent claim 14 is patentable over the Brown patent, the McConnell article, the Gazdzinski publication, the Bui publication, and the combination of references for the reasons stated hereinabove with regard to claim 1. Reconsideration and withdrawal of the rejection of independent claim 14 is respectfully requested. Dependent claims 15, 20-24, 26-27, and 29 depend directly from independent claim 14 and are believed patentable for the reasons stated herein. Reconsideration of the rejection of dependent claims 15, 20-24, 26-27, and 29 is respectfully requested.

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**CONCLUSION**

For the reasons set forth above, Appellants believe claims 1-29 are patentable over the cited art and are in condition for allowance. Reversal of all of the Examiner's rejections and allowance of these claims are respectfully requested.

Respectfully submitted,

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